

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

July 15, 2005

In the Matter of)	
)	
State Of Ohio)	
)	FCC File No. 000210606
Modification for license)	P.R. Docket 91-258
WPQF782 to add)	
NPSAC Frequencies)	
)	

To: Public Safety and Critical Infrastructure Branch
 Wireless Telecommunications Bureau

MOTION TO STRIKE

The City of Brooklyn, Cuyahoga County, Ohio (“Brooklyn”) and Medina County, Ohio (hereinafter “Petitioners”) hereby respectfully request that the Bureau strike those submissions filed by the International Municipal Signal Association (IMSA) entitled strangely as “Comments” and the even more procedurally defective document entitled *Reply Comments of the State of Ohio and Region 33 800 MHz Planning Committee Regarding the Above Captioned Matter Jointly Filed by the City of Brooklyn, Ohio and County of Medina, Ohio* (“*Reply Comments*”).

IMSA's Comments Are Procedurally Defective And Irrelevant

The contributions to this proceeding by IMSA are wholly unnecessary, self-serving, and irrelevant to the matter at bar. IMSA is not an aggrieved party and Petitioners have not requested that the Bureau take any action the result of which would be adverse to IMSA for any purpose. If IMSA believes that its reputation as a frequency coordinator has been sullied by the *pro se* efforts of an injured party seeking a simple remedy, i.e. a few 800 MHz channels, Petitioners hereby extend their sincere sympathies for disturbing the sensibilities of IMSA. However, what IMSA failed to express is why, under its direction and alleged assistance, it was unable to assist, as promised, Petitioners in negotiating the complex waters of frequency coordination. Rather than finding alleged fault with Petitioners, IMSA should be exercising some greater assistance to Petitioners in their effort to obtain a reasonable resolution of this matter. IMSA's competency and sincerity are not being challenged in this proceeding. What is called into question is the totality of the facts and circumstances of this matter, in which IMSA's and ACD's participation provided insufficient assistance, which assistance was severely hindered by a system that does not serve applicants in an equal and equitable manner.

What becomes abundantly clear in IMSA's comments is that IMSA, ACD, and the Region 33 Planning Committee, have, perhaps inadvertently for some parties,

created an overly complex system of frequency coordination, regional planning, local and state approval, unpublished or un-followed procedures, and arbitrary methods that are far from intuitive, and which result in confusion, duplication, and an arbitrary denial of access to government, i.e. the Commission's licensing process. IMSA is not to blame for this situation. However, it has allowed its frequency coordination customers to be left adrift in the wake of circumstances that resulted in Petitioners being denied the subject channels by application of the Planning Committee Chairman's single-handed, arbitrary power.

No matters, without even a modicum of standing, the comments submitted by IMSA, are not only procedurally defective, but have been rendered wholly irrelevant by Petitioners' Reply. It is apparent that IMSA never read this Reply, or IMSA might not have chosen to violate the Commission's Rules in filing its unnecessary comments. Accordingly, for the reasons stated above and for good cause shown, Petitioners respectfully request that the Bureau strike the extralegal "comments" filed by IMSA.

The Reply Comments Are Procedurally Defective

And Wholly Without Merit

Again, the pleading cycle ended with the filing of Petitioners' Reply. Without leave of the Bureau, which must be requested in advance of filing, no further petitions may be filed in this proceeding. The Bureau is fully aware of these

procedural requirements which were created by the Commission specifically to reduce the administrative burden of endless filing upon filing as parties attempt to ping-pong, back and forth, in an effort to get in the last word.

The Reply Comments provide a good example of why the Commission's rules are as they are. It adds nothing to the discussion beyond Chairman Paul M. Mayer's admission that the Committee does not meet, has not met, and likely will not meet in the foreseeable future. Accordingly, as stated by Petitioners, the actions of the Committee are actually the actions of one person, Mr. Mayer. Even if Mr. Mayer's actions are well intentioned, the Bureau cannot escape the fact that allowing a single person to administer the allocation of 800 MHz spectrum throughout an entire state, when that person is neither neutral nor subject to effective oversight, results in the appearance of conflict and impropriety. That Mr. Mayer exhibits such a conflict is apparent on the face of the Reply Comments, since he ostensibly is speaking on behalf of the State of Ohio, the Office of Chairman of the Planning Committee, and for the Planning Committee as a whole (it is likely, Mr. Mayer is simply representing himself and has borrowed the mantle of his titles for this proceeding). This is not efficiency or necessity, as suggested by Mr. Mayer. It is simply a, possibly previously unrecognized, conflict of interest. Mr. Mayer cannot do what no attorney could do in the same place. That Mr. Mayer volunteered to engage in a conflict of interest does not insulate him from appropriate review. Accordingly, all written testimony of Mr. Mayer, couched as extralegal reply comments, should be stricken as wholly inappropriate and contrary

to both procedure and the rules of evidence.

Petitioners will not burden the Bureau with a reiteration of the facts of this matter. It is sufficient that Paul Meyer's comments make clear a broken system that has been left in the hands of a single individual who alone provides interpretation of his Plan, and whose interpretation is necessarily skewed in favor of a single entity, his employer, the State of Ohio.

Petitioners will not apologize to Mr. Mayer for having local populations which number fewer than the State's; thus, according to Mr. Mayer's sole litmus test for approval, aka "the greatest good for the greatest number" no city, county, or local government entity will ever be as qualified to employ 800 MHz channels as the State. In short, when applications are presented for channels, which Mr. Mayer unilaterally believes would be better used by his employer, the application will not be approved and the State will ensure its continued dominance by filing for those channels in its own name, with Mr. Mayer's personal assistance. Nothing could resound more in a lack of due process and a denial of equal protection than this system.

That Mr. Mayer has failed to join with Petitioners in attempting to find a reasonable resolution to this matter by offering some channels for Petitioners' proposed systems, demonstrates fully that Mr. Mayer has chosen recalcitrance over resolution. In its Reply, Petitioners asked for a simple remedy, a few channels on which to operate. That's all. An end to recriminations and contention is no farther away than the Bureau's assisting Petitioners, since Petitioners cannot rely on the

Planning Committee's Chairman. In that vein, Petitioners are willing to meet with the Bureau's staff, including Mr. Mayer, to find a reasonable resolution. What Petitioners are not willing to do is to allow Mr. Mayer to engage in gratuitous attacks in a procedurally defective manner which does not move this matter forward toward resolution.

Therefore, for good cause shown, Petitioners request that the Bureau strike Mr. Mayer's/the State of Ohio's Reply Comments.

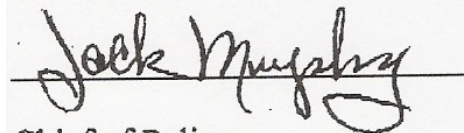
Conclusion

For those reason set forth herein, Petitioners request that the Bureau take such action as is consistent with this Motion to Strike and the Petitioners' early filed Petition for Reconsideration.

Respectfully Submitted,

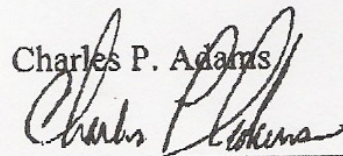
The City of Brooklyn, Ohio and Medina County, Ohio

Jack Murphy



Chief of Police
City of Brooklyn
7619 Memphis Avenue
Brooklyn, Ohio 44144
216-749-1234

Charles P. Adams



Director, Medina County of
Emergency Management A
555 Independence Drive
Medina, Ohio 44256
330-772-9240